STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 28, 2011

In the Matter of B. D. WISNER, Minor.

No. 302155
Jackson Circuit Court
Family Division
LC No. 09-001097-NA

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

Per Curiam.

Respondent appeals by right an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

This Court reviews for clear error both the trial court's finding that statutory grounds for termination of parental rights were established by clear and convincing evidence and that termination of parental rights is in the child's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent contends the trial court erred in exercising jurisdiction over the minor child. We find no error requiring reversal. Respondent may not collaterally attack the circuit court's exercise of jurisdiction now when a direct appeal was available to him earlier. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). Further, the child was removed from his mother's home, and the trial court took jurisdiction over the minor child primarily based on a finding that the mother did not make safe parenting decisions, and there was "an unfit home environment by reasoning of neglect, cruelty, drunkenness, criminality or depravity on the part of the parent." Once the court found statutory grounds for jurisdiction pertaining to the child's mother, the court was not required to find jurisdictional grounds that pertained specifically to respondent. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002).

Respondent argues that there were no reasonable efforts to reunite him with the minor child pursuant to the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., because the goal of the services provided were not reunification and did not appropriately take into account his disabilities. The ADA requires a public agency to make reasonable accommodations for individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, reunification services and programs petitioner provided must comply with the ADA and must accommodate a respondent's disabilities. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Respondent's attorney raised this issue as soon as respondent was acknowledged as the legal father and at each hearing after that.

The record, however, does not support respondent's claim that petitioner did not reasonably accommodate his disability. Respondent was provided with services that addressed his ability to appropriately parent his child. The caseworker was aware of respondent's intellectual limitations and appropriately informed the parenting class instructor. The instructor assured the caseworker that respondent's cognitive disability would be taken into account. The caseworker observed parenting time, intervened often, and attempted to instruct respondent as to appropriate parenting. Despite the caseworker's efforts, respondent's childlike behavior while interacting with the child might improved for brief periods, but then respondent would quickly revert to inappropriate conduct, such as calling the child names and telling him to shut up. Petitioner had no other services available that would address respondent's deficiencies while still allowing him to have the care and custody of the minor child. "The ADA does not require petitioner to provide respondent with full-time, live-in assistance with [his child]." *Terry*, 240 Mich App at 27-28.

The evidence shows that respondent had a cognitive disability. There had been a judicial finding that the disability was such that respondent was unable to care for his own needs and required a plenary guardian. The trial court carefully outlined all of the psychological examinations that were completed beginning in 2003, with the most recent examination completed in 2010. All examinations consistently determined that respondent fell within the range of moderate to severe mental retardation. Training or additional services would not improve respondent's cognitive abilities. Therefore, it is almost certain that the barriers to safe parenting will continue to exist during the entire period that the child is a minor. This Court finds that reasonable efforts were made to rectify the conditions, but, unfortunately, they were not successful.

The trial court did not clearly err when it found clear and convincing evidence establishing the statutory grounds for termination of respondent's parental rights. Respondent was unable to care for his own basic needs, much less the basic needs of a child. In a hearing addressing the parental rights of a child, a parent must demonstrate that the basic needs of the child can be met before the minor child is returned to the care of the parent. "'If a parent cannot or will not meet [his] irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.'" *Terry*, 240 Mich App at 28, quoting *In re AP*, 1999 PA Super 78; 728 A2d 375, 379 (1999). At the time of the termination hearing, respondent was unable to meet his own needs, and there were no services that petitioner could have provided him to improve this situation. He was unable to provide for the proper care and custody of the minor child and would be unable to do so going forward. Although respondent had not physically harmed the minor child, he behaved as a child himself during parenting time, and the minor child was uncomfortable with and confused about visitation. Respondent's inability to act as a parent would clearly put the minor child at risk of harm if the child was returned to his care.

Respondent argues that petitioner should have explored the possibility that the plenary guardian might assist respondent in caring for the minor child or might adopt the minor child. However, early on in the proceedings, the guardian stated that she did not think she could take care of the minor child in addition to being respondent's (who was her son-in–law) and her daughter's guardian. Although she later stated she might consider adopting the child, her testimony was troubling because she was not able to remember how many children she had already adopted, when they were adopted, or when she became respondent's guardian. Further,

she did not have the necessary funds for gas to drive respondent to court and to parenting time, so it appears unlikely that she would be able to financially care for the minor child as well.

Finally, the trial court did not clearly err in its determination that termination of parental rights was in the child's best interests. MCL 712A.19b(5). Respondent was unable to provide the minor child with the safety and stability that the child needed. The minor child was uncomfortable with and confused by his interactions with respondent, and there was no evidence that there existed any meaningful bond between respondent and the minor child.

We affirm.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly